

CITY OF CUPERTINO  
10300 Torre Avenue  
Cupertino, California 95014

DRAFT RESOLUTION

OF THE DESIGN REVIEW COMMITTEE OF THE CITY OF CUPERTINO  
APPROVING A SIGN EXCEPTION FOR LED SIGNAGE ON AN EXISTING FUEL  
PRICE GROUND SIGN AND SIX ADDITIONAL WALL SIGNS ON THE BUILDING  
AND FUEL CANOPY FOR AN EXISTING SERVICE STATION (VALERO) LOCATED  
AT 1699 SOUTH DE ANZA BOULEVARD

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SECTION I: PROJECT DESCRIPTION

Application No.: EXC-2019-002  
Applicant: Gus Ortega (Sign Development, Inc.)  
Location: 1699 South De Anza Boulevard (APN 366-10-120)

SECTION II: FINDINGS FOR SIGN EXCEPTION:

WHEREAS, the Design Review Committee of the City of Cupertino received an application for a Sign Exception as described in Section I. of this Resolution; and

WHEREAS, the necessary public notices have been given as required by the Procedural Ordinance of the City of Cupertino, and the Design Review Committee has held at least one public hearing in regard to the application; and

WHEREAS, the project is determined to be categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 Existing Facilities; and

WHEREAS, the applicant has met the burden of proof required to support said application; and

WHEREAS, the Design Review Committee finds as follows with regard to this application:

1. The literal enforcement of the provisions of this title will result in restrictions inconsistent with the spirit and intent of this title.

*The project is consistent with the intent of the Sign Ordinance in that it provides architectural and aesthetic harmony with the building/canopy design and provides good*

*visibility for the public and the needs of the business while minimizing distraction to the pedestrian, bicyclist, and motorist. The LED numerals function similar to the existing plastic numerals in that they change depending on fluctuations in fuel pricing. The lighting intensity for the fuel sign and canopy as proposed do not exceed the City's Municipal Code regulations and the City will have the ability to require that the intensity be reduced if deemed necessary by the City.*

2. That the granting of the exception will not result in a condition which is materially detrimental to the public health, safety, or welfare.

*The proposed signs will not be detrimental or injurious to property or improvements in the vicinity, and will not be detrimental to the public health, safety, or welfare. The project includes automatic dimming technology to reduce glare and will not include animated messages.*

3. That the exception granted is one that will require the least modification of the prescribed regulations and the minimum variance that will accomplish the purpose.

*The strict application of the ordinance standards would not allow the new industry-standard of using LED technology similar to other service stations in the City and throughout the region. The proposed additional signs comply with the previous sign exception approvals for gas stations. The illumination intensity, appearance and location, relative to the public right-of-way, of the proposed signs would not create distractions for pedestrians, bicyclists and vehicles nor would it negatively impact the City's aesthetic appearance.*

NOW, THEREFORE, BE IT RESOLVED:

That after careful consideration of maps, facts, exhibits, testimony and other evidence submitted in this matter, subject to the conditions which are enumerated in this Resolution beginning on Page 3 thereof,

The application for a Sign Exception, Application no. EXC-2019-002, is hereby approved and that the subconclusions upon which the findings and conditions specified in this Resolution are based and contained in the Public Meeting record concerning Application no. EXC-2019-002 as set forth in the Minutes of Design Review Committee Meeting of March 19, 2020, and are incorporated by reference as though fully set forth herein.

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SECTION III: CONDITIONS ADMINISTERED BY THE COMMUNITY DEVELOPMENT DEPT.

1. APPROVED EXHIBITS

Approval is based on the plan set dated February 2, 2019 and revised November 13, 2019 entitled, "Valero 1699 De Anza Blvd., Cupertino, CA 95014" drawn by Sign Development, Inc., consisting of 8 sheets labeled 1-8; except as may be amended by conditions in this resolution.

2. ACCURACY OF PROJECT PLANS

The applicant/property owner is responsible to verify all pertinent property data including but not limited to property boundary locations, building setbacks, property size, building square footage, any relevant easements and/or construction records. Any misrepresentation of any property data may invalidate this approval and may require additional review.

3. ANNOTATION OF THE CONDITIONS OF APPROVAL

The conditions of approval set forth shall be incorporated into and annotated on the first page of the building plans.

4. EXCEPTION APPROVAL

A Sign Exception is hereby granted to allow LED gasoline price signage to the existing fuel price ground sign, two additional building wall signs ("Smog Shop" and "Car Wash"), and four additional canopy signs (three downlit LED bars, and one illuminated logo). The color of the LED numerals of the fuel price sign shall be red, and the background shall be black.

5. CONCURRENT APPROVAL CONDITIONS

The conditions of approval contained in file no. DIR-2019-007 shall be applicable to this approval.

6. ILLUMINATION INTENSITY

The intensity of all signs shall not exceed 250 foot-lamberts. A note acknowledging this condition of approval shall be incorporated in the building permit plans.

7. LED SIGN REQUIREMENTS

The following requirements shall apply to the LED fuel price signs:

- a. The signs shall not display animated messages, including flashing, blinking, fading, rolling, shading, dissolving, or any other effect that gives the appearance of movement.

- b. The signs shall not include any audio messages.
- c. The signs shall utilize automatic dimming technology to adjust the brightness of the signs relative to ambient light so that at no time shall a sign exceed a brightness level of three-tenths foot candles above ambient light, as measured using a foot candle (Lux) meter aimed directly at the sign face at a distance of 100 feet from the sign.
- d. An ambient light measurement shall be taken using a foot candle meter at some point between the period of time between 30 minutes past sunset and 30 minutes before sunrise with the sign turned off to a black screen.
- e. Immediately following the ambient light measurement taken in the manner required above, an operating sign light measurement shall be taken with the sign turned on.
- f. The difference between the ambient light measurement and the operating sign light measurement shall be three tenths foot candles or less.
- g. The signs shall contain a default mechanism that will cause the sign to revert immediately to a black screen if the sign malfunctions.
- h. The LED copy may only contain fuel price numerals.
- i. The signs shall comply with Section 13532 of the State of California Business and Professions Code and all other State regulations regarding LED signage.

8. LIGHTING INTENSITY VERIFICATION

Prior to final inspections of sign permits, a licensed lighting engineer shall confirm that the lighting intensity is in compliance with the conditions of approval in this resolution.

9. SIGN EXCEPTION REVIEW/ADDITIONAL RESTRICTIONS

If complaints are received related to the intensity of the LED signage under this Sign Exception, and the complaints are not addressed immediately by the property management, then the Design Review Committee or Planning Commission shall conduct a public hearing on the Sign Exception at which time, the approval for LED signage may be modified or revoked.

The City reserves the right to require additional measures to reduce lighting intensity if deemed necessary.

10. SIGN PERMITS REQUIRED

The applicant shall consult with the City's Building Division to obtain the necessary sign permits for this project.

11. INGRESS/EGRESS PAVEMENT MARKERS AND DRIVEWAY SIGNAGE

Prior to final Building inspection, the applicant shall per the conditions of approval in U-2009-02 and ASA-2009-02:

- a. Repaint the driveway markings on Prospect Road (nearest the intersection) to ingress-only, and the driveway located along S. De Anza Boulevard (nearest the intersection) to egress-only and
- b. Install additional signage (other than pavement markings) to indicate appropriate ingress only, egress only and no entry signage facing both the public right-of-way and interior to the property.

12. UNPERMITTED SIGNS

Prior to final Building inspection, the applicant shall remove all unpermitted wall, window, and temporary ground signs onsite to the satisfaction of the Community Development Director.

13. TEMPORARY SIGNS

Temporary signs shall comply with the Temporary Sign regulations of the City's Sign Ordinance (Chapter 19.104 of the Municipal Code). A temporary sign permit is required for all banners, a-frame or other freestanding signs (except those required by the State of California), and promotional devices.

14. CONSULTATION WITH OTHER DEPARTMENTS

The applicant is responsible to consult with other departments and/or agencies with regard to the proposed project for additional conditions and requirements. Any misrepresentation of any submitted data may invalidate an approval by the Community Development Department.

15. INDEMNIFICATION

The applicant agrees that, to the fullest extent permitted by law, the applicant shall indemnify, defend with the attorneys of the City's choice, and hold harmless the City, its City Council, and its officers, employees, and agents (collectively, the "indemnified parties") from and against any liability, claim, action, cause of action, suit, damages, judgment, lien, levy, or proceeding brought by a third party against one or more of the indemnified parties or one or more of the indemnified parties and the applicant related to any Ordinance, Resolution, or action approving the project, the related entitlements, environmental review documents, finding or determinations, or any other permit or approval authorized for the project, including (without limitation) reimbursing the City its actual attorneys' fees and costs incurred in defense of the litigation. The applicant shall pay such attorneys' fees and costs within 30 (thirty) days following receipt of invoices from City. Such attorneys' fees and costs shall include

amounts paid to the City's outside counsel and shall include City Attorney time and overhead costs and other City staff overhead costs and any costs directly related to the litigation reasonably incurred by City. The applicant shall likewise indemnify, defend, and hold harmless the indemnified parties from and against any damages, attorneys' fees, or costs awards, including attorneys' fees awarded under Code of Civil Procedure section 1021.5, assessed or awarded against the indemnified parties.

The Applicant further agrees to defend, indemnify and hold harmless the indemnified parties for all cost incurred in additional investigation or study of, or for supplementing, redrafting, revising, or amending any document (such as an Environmental Impact Report, negative declaration, specific plan, or general plan amendment) if made necessary by proceedings challenging the project approvals and related environmental review if the applicant desires to continue to pursue the project.

**16. NOTICE OF FEES, DEDICATIONS, RESERVATIONS, OR OTHER EXACTIONS**

The Conditions of Project Approval set forth herein may include certain fees, dedication requirements, reservation requirements, and other exactions. Pursuant to Government Code Section 66020(d) (1), these Conditions constitute written notice of a statement of the amount of such fees, and a description of the dedications, reservations, and other exactions. You are hereby further notified that the 90-day approval period in which you may protest these fees, dedications, reservations, and other exactions, pursuant to Government Code Section 66020(a), has begun. If you fail to file a protest within this 90-day period complying with all of the requirements of Section 66020, you will be legally barred from later challenging such exactions.

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PASSED AND ADOPTED this 19th day of March 2020, Regular Meeting of the Design Review Committee of the City of Cupertino, State of California, by the following vote:

AYES: COMMISSIONERS:  
NOES: COMMISSIONERS:  
ABSTAIN: COMMISSIONERS:  
ABSENT: COMMISSIONERS:

ATTEST:

APPROVED:

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Jeffrey Tsumura  
Associate Planner

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R Wang,  
Chair, Design Review Committee